

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**0.1785 ACRES OF LAND, MORE OR
LESS, SITUATE IN CHESAPEAKE
VIRGINIA, AND MSF INVESTORS II,
LLC, ET AL.,**

Defendants.

Civil Case No. 2:24-cv-00023-AWA-RJK

**MEMORANDUM IN SUPPORT OF UNOPPOSED
MOTION TO CONTINUE DISCOVERY AND MOTION DEADLINES**

Plaintiff United States of America respectfully submits this Memorandum in support of its Motion to Continue Discovery and Motion Deadlines.

FACTUAL BACKGROUND

In this condemnation case, the United States and Defendants MSF Investors II, LLC and Arcadia Equity Associates (the “Landowners”) have pursued discovery in this matter since the Court entered its Rule 26(f) Pretrial Order on July 15, 2024. ECF No. 51. The United States and the Landowners have each issued several discovery requests and are preparing to exchange expert reports. Following the United States’ filing of an amended complaint on January 17, 2025 (ECF No. 63), the Court entered a Supplemental Rule 16(b) Scheduling Order in this case on March 5, 2025. ECF No. 70. This order set deadlines for fact and expert discovery, motions practice, and a trial commencing on November 4, 2025. *Id.*

The United States has retained an expert witness who is expected to testify in this matter and therefore must prepare a written report pursuant to Federal Rule of Civil Procedure

26(a)(2)(B). Under the Court’s current scheduling order, this expert report must be disclosed by April 11, 2025. *Id.* ¶ 2. The United States’ expert witness recently broke his femur and has undergone surgery for which he is required to undergo several weeks of recovery. The United States’ expert witness has been unable to work full-time during this recovery period.

ARGUMENT

Federal Rule of Civil Procedure 16 states that the Court’s scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). In addition, this Court’s local rule states that “no extensions or continuances [of the Court’s scheduling order] shall be granted in the absence of a showing of good cause.” Local Rule 16(B). “The touchstone of the good cause requirement is diligence.” *Faulconer v. Centra Health, Inc.*, 808 Fed. App’x. 148, 152 (4th Cir. 2020).

The United States has diligently litigated this case alongside the Landowners. However, the United States’ expert is now recovering from a serious injury and surgery that has disrupted his work, including his Rule 26(a)(2) disclosure for this case. The United States now seeks a short two-week extension of the discovery and motion deadlines in this case so that its expert can recover from his serious injury and complete his Rule 26(a)(2)(B) report. Specifically, the United States proposes the following new deadlines for discovery and dispositive motions:

Event	Current Deadline (ECF No. 70)	United States' New Proposed Deadline
Case-in-Chief Rule 26(a)(2) Disclosures for All Parties	April 11, 2025	April 25, 2025
Rebuttal Rule 26(a)(2) Disclosures for All Parties	June 5, 2025	June 18, 2025
Close of Fact Discovery	June 9, 2025	June 23, 2025
Close of Expert Discovery	June 16, 2025	June 30, 2025
Dispositive Motion Deadline	June 23, 2025	July 7, 2025
Responses to Dispositive Motions	July 11, 2025	July 25, 2025
Replies in Support of Dispositive Motions	July 18, 2025	August 1, 2025

The United States does not believe that any other deadline in the Court's scheduling order needs to be amended. The United States conferred with Counsel for the Landowners and Counsel for Starbucks Corporation¹ regarding this request, neither of whom objects to the extension.

CONCLUSION

For the above reasons, the United States respectfully requests that the Court grant this Motion and impose new deadlines for discovery and motions practice according to the new proposed schedule above.

¹ The only other party who has appeared in this matter, Food Lion, LLC, filed a Disclaimer of Interest in this case "disclaim[ing] any right, title claim, or interest in the compensation paid or to be paid in this case" and "authoriz[ing] this Court to dismiss it as a defendant in this case." ECF No. 68.

DATED: March 17, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the above document with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

I further certify that the foregoing Motion was mailed to the following parties:

City of Chesapeake, Virginia City Attorney for the City of Chesapeake, Virginia 306 Cedar Road Chesapeake, VA 23322	H Huynh LLC, <i>a Virginia limited liability company</i> c/o Huy Huynh, Registered Agent 2617 Moses Grandy Trail, Suite 106 Chesapeake, VA 23323
Bank of America, National Association c/o CT Corporation System, Registered Agent 4701 Cox Road Suite 285 Glen Allen, VA 23060	LOJ Corporation, <i>a Virginia corporation</i> c/o Kyoung H. Lee, Registered Agent 2617 Moses Grandy Trail, Suite 108 Chesapeake, VA 23323
Protective Life Insurance Company, <i>a Tennessee Corporation</i> c/o CT Corporation System, Registered Agent 4701 Cox Road Suite 285 Glen Allen, VA 23060	Mohamed Arfaoui 2617 Moses Grandy Trail, Suite 110 Chesapeake, VA 23323
B. Randolph Boyd, <i>in his capacity as Trustee of the Credit Line Deed of Trust and Security Agreement dated October 27, 1997</i> 4343 Kimages Wharf Road Charles City, VA 23030	Deep Creek Pizza LLC, <i>a Virginia limited liability company</i> c/o Kristen Jurjevich, Registered Agent Pender & Coward, P.C. 222 Central Park Avenue, Suite 400 Virginia Beach, VA 23462
Chang Tao Lin, Inc., <i>a Virginia corporation</i> c/o Chang Tao Lin, Registered Agent 816 S. Rosemont Road Virginia Beach, VA 23452	Dolgen, LLC, <i>a Kentucky limited liability company</i> c/o Corporation Service Company, Registered Agent 100 Shockoe Slip Fl 2 Richmond, VA 23219
Deep Creek Comics, LLC, <i>a Virginia limited liability company</i> c/o Jeffrey Smithwick, Registered Agent 241 Palace Green Blvd Virginia Beach, VA 23452	Samantha Rudolph Photography LLC, <i>a Virginia limited liability company</i> c/o Samantha Rudolph, Registered Agent 2617 Moses Grandy Trail, Suite 120 Chesapeake, VA 23323
Golden China Lee Inc., <i>a Virginia corporation</i> c/o Xin Hai Li, Registered Agent 2617 Moses Grandy Trail, Suite 104 Chesapeake, VA 23323	El Puente II of Chesapeake, Inc., <i>a Virginia corporation</i> c/o Ricardo Perez, Registered Agent 104 Watch Harbour Court Suffolk, VA 23435

Waffle House, Inc., <i>a Georgia corporation</i> c/o Corporation Service Company, Registered Agent 100 Shockoe Slip Fl 2 Richmond, VA 23219	Howard P. Cobb, D.D.S., P.C., <i>a Virginia professional corporation</i> c/o Christopher Graff, Registered Agent 4912 Athens Boulevard Virginia Beach, VA 23455
Lynch Family LLC, <i>a Virginia limited liability company</i> c/o John C. Lynch, Registered Agent 222 Central Park Avenue, Suite 2000 Virginia Beach, VA 23462	Deacon Insurance Agency, Inc., <i>a Virginia corporation</i> c/o William Stewart Deacon III, Registered Agent 2605 Moses Grandy Trail, Suite A Chesapeake, VA 23323
Advance Auto Parts, Inc., <i>a Delaware corporation</i> c/o Corporation Service Company, Registered Agent 100 Shockoe Slip Fl 2 Richmond, VA 23219	Boddie-Noell Enterprises, Inc., <i>a North Carolina corporation</i> (as successor-by-merger to BNE Restaurant Group II LLC) c/o CT Corporation System, Registered Agent 4701 Cox Road Suite 285 Glen Allen, VA 23060

DATED: March 17, 2025

/s/ Joseph A. Figueroa
Joseph A. Figueroa
Attorney, U.S. Department of Justice